

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM EDWARD JONES,

Plaintiff,

v.

DECISION AND ORDER
12-CV-57

C.O. TOMPKINS et al.,

Defendants.

The instant matter was referred to Magistrate Judge Hugh B. Scott for supervision of all pre-trial proceedings. Defendants have filed motions to dismiss, to change venue, and to sever. (Dkt. Nos. 12 and 19) Plaintiff, who is incarcerated and proceeding *pro se*, has made a motion to reinstate previously dismissed defendants as well as a motion for a preliminary injunction. (Dkt. Nos. 22 and 26)

On September 18, 2013, Magistrate Judge Scott issued a Report and Recommendation recommending the following: (1) dismissal of plaintiff's due process claims against defendants relating to the Tompkins misbehavior report and associated disciplinary proceedings; (2) dismissal of plaintiff's motion to reinstate previously dismissed defendants but allowing plaintiff thirty (30) days to file an amended complaint with respect to his deliberate indifference claims; and (3) denial of plaintiff's motion for a preliminary injunction on the basis that he failed to show that his health condition was medically serious. (Dkt. No. 36) As a

result of the recommended dismissal of the due process claims related to the Tompkins discipline report, the Magistrate Judge recommended denying defendants' motion to sever and change venue as moot. *Id.*

Plaintiff filed objections to the Report and Recommendation on November 4, 2013. (Dkt. No. 40) Defendants filed a response on December 5, 2013 (Dkt. No. 45) and plaintiff filed a reply on December 26, 2013 (Dkt. No. 46). The Court deemed the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the parties' submissions, the Court hereby adopts Magistrate Judge Scott's findings in their entirety.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, defendants' motion to dismiss plaintiff's due process claim with respect to the Clinton defendants is granted; plaintiff's motion to reinstate previously dismissed defendants is denied; plaintiff is granted leave to file an amended complaint consistent with the Magistrate Judge's explanation in the Report and Recommendation; and plaintiff's motion for a preliminary injunction is denied.

Plaintiff shall file an amended complaint on or before April 7, 2014. The matter is referred back to Magistrate Judge Scott for further proceedings.

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated: March 5, 2014